

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release is entered into by and between the Federal Deposit Insurance Corporation, as Receiver for IndyMac Bank, F.S.B. (the "FDIC") and Great American Assurance Company ("Great American") for the mutual promises and consideration set forth herein, as follows:

I.

DEFINED TERMS

1. The term "Agreement" means this Settlement Agreement and Mutual Release.
2. The term "Parties" means the FDIC and Great American, collectively.
3. The term "Lawsuit" means and refers to that case styled *Federal Deposit Insurance Corporation, as Receiver for IndyMac Bank, F.S.B. v. Great American Assurance Company, an Ohio Corporation; and Does 1 through 10*, Case No. 10-00115, in the United States District Court for the Central District of California, Western Division.
4. The term "Policy" means and refers to the Mortgage Service Provider's Errors and Omissions Insurance Policy, Policy No. with the Policy Period (b)(4) beginning June 1, 2004, issued by Great American to Named Insured (b)(4). The Policy includes a Claimant/Third Party Beneficiary Endorsement in which IndyMac Bank, FSB ("IndyMac") is described as a valid claimant under the policy to the extent of its legal or contractual interest in one or more mortgage agreements and any damages arising from the mortgage origination services rendered by the Named Insured, and a third party beneficiary to any damage proceeds from mortgage agreements in which

they hold a legal or contractual interest.

5. The term "Closing" means and refers to the date upon which all parties have signed this Agreement.

II.

RECITALS

WHEREAS, Great American issued the Policy to Named Insured [redacted] (b)(4)

and

WHEREAS, IndyMac Bank, F.S.B. received mortgage services from [redacted] (b)(4)

in connection with particular loans it extended to its borrowers; and

(b)(4) WHEREAS, [redacted] provided written notice of various claims to Great American for losses it alleged it sustained as a result of mortgage services it provided to IndyMac Bank, F.S.B. in the course of IndyMac's extension of credit to borrowers on

(b)(4),(b) transactions referred to as the [redacted]

(6) [redacted] transactions; and

(b)(4),(b) WHEREAS, the [redacted] loan, bearing IndyMac Loan Number [redacted] was (b)(4),(b)

(6) assigned Claim No. [redacted] by Great American; and

(b)(4),(b) WHEREAS, the [redacted] loan, bearing IndyMac Loan Number [redacted] was (b)(4),(b)

(6) assigned Claim No. [redacted] and

(b)(4),(b) WHEREAS, the [redacted] loan, bearing IndyMac Loan Number [redacted] was (b)(4),(b)

(6) assigned Claim No. [redacted] by Great American; and

WHEREAS, Great American issued to [redacted] its various reservation of (b)(4)

(b)(4),(b) rights letters on the [redacted] claims, and requested further information (6)

(b)(4) from [redacted] in regard to the specifics of each claim and request specific documentation in regard to each claim; and

WHEREAS, Great American did not receive the requested documentation it

(b)(4),(b)(6) needed to analyze coverage for the [redacted] transactions from [redacted] (b)(4) (b)(4) [redacted] but continued to request the needed documentation in additional reservation of (b)(4) rights letters sent to [redacted] and

WHEREAS, IndyMac Bank, F.S.B. was closed by the Office of Thrift Supervision on July 11, 2008, and the FDIC was appointed as Receiver for IndyMac; and

WHEREAS, the FDIC filed the Lawsuit, seeking relief in connection with the [redacted] (b)(4),(b)(6)

(b)(4),(b)(6) [redacted] loans, as well as another transaction referred to as the [redacted] (b)(4),(b)(6) (b)(4),(b)(6) [redacted] loan [redacted], bearing IndyMac Loan Number [redacted] for which [redacted] (b)(4) (b)(4) [redacted] had not made a prior claim; and

WHEREAS, Great American contends that it had not previously been provided

(b)(4),(b)(6) with notice of a loss on the [redacted] loan and had no claim file established regarding such matter; and

WHEREAS, Great American contends that it immediately requested that the FDIC provide all documentation necessary for Great American to analyze coverage

(b)(4),(b)(6) under the Policy for the [redacted] loan and advised it had not previously been provided with notice of loss for such loan; and

WHEREAS, Great American contends that it also immediately requested that the FDIC provide the relevant documentation necessary for Great American to analyze

(b)(4),(b)(6) coverage under the Policy for the [redacted] loans, for which prior notice had (b)(4) been received, but for which [redacted] had not provided required documents; and

WHEREAS, Great American contends that the FDIC agreed to provide the documentation it could, and did make efforts to locate and provide documentation on the four loans; and

WHEREAS, Great American contends that it notified the FDIC that the documentation the FDIC provided to Great American, according to Great American, did not include all necessary documents to analyze the requirements and conditions of the Insuring Agreement and Policy, and did not meet the requirements set forth in the Policy; and

WHEREAS, the Parties entered into negotiations to resolve the matters between them in lieu of conducting protracted litigation on the loans; and

WHEREAS, Great American continues to reserve all rights under the Policy; and

WHEREAS, it is the desire of the Parties to this Agreement to enter into an agreement to resolve all matters in controversy in the Lawsuit; and

WHEREAS, it is understood by the Parties that this Agreement is for the purpose of the settlement and compromise of all disputed matters in the Lawsuit; and

WHEREAS, the Parties agree and acknowledge that this Agreement is entered into for the sole purpose of resolving contested claims and legal disputes, and that neither the execution nor performance of any of the terms of this Agreement shall constitute or be construed as an admission by any party herein of any liability; and

WHEREAS, the Parties hereto desire to compromise and settle all claims and causes of action of any kind whatsoever which the Parties have or may have in the future against the other, arising out of the Policy and their dealings but related only to

(b)(4),(b)(6) the [redacted] loans, intending that the full terms and conditions of the Agreement be set forth in this Agreement; and

NOW, THEREFORE, in consideration of the promises, warranties, agreements and representations set forth herein, and other good and valuable consideration, the sufficiency of which is hereby recognized, the Parties enter into this Settlement Agreement and Release.

III.

SETTLEMENT TERMS AND RELEASES

1. Agreement Regarding Settlement Payment.

1.1 In full and final settlement of the claim made on the Policy as relates to the (b)(4),(b)(6) Lawsuit and the [redacted] loans, Great American agrees to pay to FDIC the sum of \$135,000.00 by not later than two business days after this Agreement is signed by both Parties. The payment will be made by check payable to the Federal Deposit Insurance Corporation, as Receiver for IndyMac Bank, F.S.B., and delivered to counsel of record Maurice Wainer, 270 N. Canon Drive, Penthouse, Beverly Hills, CA 90210.

2. Resolution of the Lawsuit and Payment of Fees.

2.1 The Parties agree to instruct their respective counsel to sign and file a Stipulation for Dismissal With Prejudice to terminate the Lawsuit in its entirety. The Stipulation for Dismissal With Prejudice will be filed by counsel for the FDIC no later than two business days after the receipt by the FDIC's counsel of the settlement payment described in Paragraph 1.1 herein.

2.2 The Parties agree that each Party shall bear its respective attorneys' fees and expenses incurred in the Lawsuit.

3. Agreement Regarding the Policy and Release of Claims on the Policy.

3.1 Great American continues to reserve all rights under the Policy, and continues to assert all of its coverage positions taken in its prior correspondence on the

(b)(4),(b)(6) claims involving the [redacted] loans.

3.2 Great American makes the Settlement Payment described in Paragraph

1.1 herein on the condition that the negotiation of the claims involving the [redacted] (b)(4),(b)(6)

(b)(4),(b)(6) [redacted] loans will not be asserted by the FDIC as any type of waiver of the terms of the Policy or precedent for payment of similar claims in any other pending or future claims on the Policy.

3.3 Nothing contained in this Agreement will impact all rights and defenses of Great American under the Policy for any and all other claims made by the FDIC and/or

any other insureds related to or in connection with the Policy, except as to the [redacted] (b)(4),(b)(6)

(b)(4),(b)(6) [redacted] loans.

3.4 This Agreement is entered into by the Parties without prejudice or value as precedent to any other proceedings, and the Agreement shall not be used or referred to in any way in any claim, proceeding, or hearing to create, approve or interpret the obligations under, or the terms, provisions and conditions of the Policy.

3.5 In consideration of the Settlement Payment, the receipt and sufficiency of which is hereby acknowledged, the FDIC releases its claims for the [redacted] (b)(4),(b)(6)

(b)(4),(b)(6) [redacted] loans under the Policy.

3.6 Notwithstanding any other provision in this Agreement, the FDIC does not

release, and expressly preserves fully and to the same extent as if the Agreement had not been executed any claims against Great American arising out of existing or failed financial institutions other than IndyMac Bank, FSB.

3.7 Notwithstanding any other provision in this Agreement, the FDIC does not release, and expressly preserves fully and to the same extent as if the Agreement had not been executed any action taken by any other federal agency. In addition, this Agreement does not purport to waive, or intend to waive, any claims which could be brought by the United States through either the Department of Justice or the United States Attorney's Office for any federal judicial district. In addition, the FDIC specifically reserves the right to seek court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, *et seq.*, if appropriate.

4. Mutual Releases.

4.1 Effective at Closing, the FDIC, together with its agents, representatives, attorneys of record in the Lawsuit, and assigns, fully releases Great American and Group9, Inc., together with their respective agents, representatives, attorneys of record in the Lawsuit, assigns, predecessor entities, affiliates, successor entities, officers, directors, employees, contractors, insurers, and reinsurers from any and all acts, failures to act, claims, demands, losses, omissions, damages, actions, causes of action, rights, contracts, agreements, judgments, penalties, attorneys fees, interest, costs, and other actual or alleged liability now accrued or hereafter to accrue, of any kind whatsoever, as to person and to property, at common law, in equity, pursuant to statute, or otherwise, direct or indirect, known or unknown, now existing or that might arise hereafter, asserted or not, of any kind, relating only to the (b)(4),(b)(6)

loans; the alleged actions and/or alleged inactions of [redacted] in connection with the (b)(4)

(b)(4),(b)(6) [redacted] loans; the [redacted] claims asserted under the Policy; and the alleged actions and/or alleged inactions of Great American

(b)(4),(b)(6) under the Policy as it relates to the [redacted] loans; including but not limited to all matters included in or which could have been included in the Lawsuit as it

(b)(4),(b)(6) relates only to the [redacted] loans; provided, however, that nothing contained herein shall be construed as a release of any claims or liabilities arising out of a breach of this Agreement or of any claims or liabilities arising out of any loans in favor

(b)(4),(b)(6) of FDIC other than the [redacted] loans.

4.2 Effective at Closing, Great American and its agents, representatives, attorneys of record in the Lawsuit, assigns, predecessor entities, successor entities, officers, directors, employees, contractors, and reinsurers fully release the FDIC, with its agents, representatives, attorneys of record in the Lawsuit, heirs, and assigns from any and all acts, failures to act, claims, demands, losses, omissions, damages, actions, causes of action, rights, contracts, agreements, judgments, penalties, attorneys fees, interest, costs, and other actual or alleged liability now accrued or hereafter to accrue, of any kind whatsoever, as to person and to property, at common law, in equity, pursuant to statute, or otherwise, direct or indirect, known or unknown, now existing or that might arise hereafter, asserted or not, of any kind, relating only to the [redacted] (b)(4),(b)(6)

(b)(4),(b)(6) [redacted] claims asserted under the Policy, and the alleged actions and/or alleged inactions of the FDIC under the Policy as it relates to the [redacted] (b)(4),(b)(6)

(b)(4),(b)(6) [redacted] loans, including but not limited to all matters included in or which could have been included in the Lawsuit as it relates only to the [redacted] loans; (b)(4),(b)(6)

provided, however, that nothing contained herein shall be construed as a release of any claims or liabilities arising out of a breach of this Agreement or of any claims or liabilities

(b)(4),(b) arising out of any loans other than the [REDACTED] loans.
(6)

4.3 The releasing Parties acknowledge that they may have sustained damages, losses, fees, costs, or expenses in connection with the matters being released herein which have not yet manifested themselves and which are presently unknown and unsuspected, but nevertheless deliberately intend to and do hereby release the released parties and each of them, from all such damages, losses, fees,

(b)(4),(b) costs or expenses related to the [REDACTED] loans. This Agreement
(6)

shall be given full force and effect according to each and all of its express terms and provisions, including those relating to unknown and unanticipated damages, losses, fees, costs and expenses. The releasing Parties acknowledge and agree that this waiver is an essential and material term of this Agreement, and the settlement which leads to it, and that without such waiver, the Agreement and the settlement would not have been entered into. Each Party represents and warrants that it has been advised by its legal counsel with respect to this waiver and that it understands and acknowledges the significance and consequence of it. THIS AGREEMENT IS INTENDED TO AND DOES APPLY WITH RESPECT TO ALL FACTS, ACTS AND OMISSIONS, WHETHER KNOWN OR NOT KNOWN BETWEEN OR IN CONNECTION

(b)(4),(b) WITH THE PARTIES as it relates to the [REDACTED] loans. With
(6)

respect thereto, subject to the limitations, if any, set forth herein below, each Party knowingly, after having the opportunity to obtain the advice of his/her/its attorneys,

waives all provisions of California Civil Code section 1542, as it relates to the [redacted] (b)(4),(b)(6)

(b)(4),(b)(6) [redacted] loans, which reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

5. Capacity to Execute Agreement and Release Claims.

5.1 Each of the Parties hereto warrants to each other that: (i) it has the legal capacity to and is duly authorized to execute and deliver this Agreement and any other documents, agreements or instruments to be delivered by such Parties hereto; (ii) it has taken all actions and obtained all approvals or consents necessary to authorize the execution and delivery of this Agreement and any other documents, agreements or instruments to be delivered to such Parties hereto; (iii) this Agreement, and any other documents, agreements, or instruments delivered by such Parties hereto are its legal, valid, and binding obligation, enforceable in accordance with its terms; (iv) the execution and delivery of this Agreement and any other documents, agreements, or instruments executed or delivered by such Party pursuant hereto and the consummation of the transactions herein contemplated does not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any material agreement or instrument or any other provision of law, statute or regulation to which such Party is bound.

5.2 Each of the undersigned persons warrants that he or she is authorized to execute this Agreement in the capacity in which he or she is signing, and that he or she

has full power and authority to bind the Party for whom he or she is signing to each and every provision of this Agreement.

5.3 This Agreement shall be binding upon and inure to the benefit of the undersigned Parties and their respective heirs, executors, administrators, representatives, estates, trusts, successors in interest, assigns, personal representatives, and transferees.

5.4 Each of the Parties warrants that it is the sole legal owner and holder of all claims released herein, and that none has transferred or otherwise impaired any such claims and/or rights, in whole or in part.

6. Reliance on Information.

6.1 This Agreement contains the full and complete agreement of the Parties hereto, and all other prior negotiations pertaining to the subject matter hereof, are merged into this Agreement. Each Party hereby expressly disclaims reliance upon any facts, promises, undertakings, or representations made by any other Party or person, or such Party or person's agents, representatives, or attorneys, prior to the date of execution of this Agreement.

6.2 Each Party to this Agreement has had the benefit of counsel of its own choice, has been afforded the opportunity to review this Agreement with its chosen counsel, and executes this Agreement of its own free will and accord, for the purposes and considerations expressed herein.

7. Multiple Counterparts.

7.1 This Agreement may be executed in multiple counterparts, each of which shall be fully effective as an original, all of which, when signed by all Parties, together shall constitute one and the same instrument.

8. Governing Law and Construction of Agreement.

8.1 This Agreement shall be governed, construed, and enforced under the laws of the State of California.

8.2 All provisions of this Agreement are contractual and are not mere recitals.

8.3 Each of the Parties, together with their respective attorneys, participated in the drafting and preparation of this Agreement. Therefore, this Agreement shall not be construed in favor of or against any Party on the basis that any such Party did or did not author this Agreement or any attachment related to it.

8.4 This Settlement Agreement and Release is a compromise of disputed claims, and nothing contained herein shall be construed as an admission of liability by any Party, all such liability being expressly denied.

9. Effective Date.

9.1 This Agreement is effective as of the date it is signed by the Party last signing below.

10. Enforcement.

10.1 In any action to enforce the terms of this Agreement, including any action to recover damages for any violations herein, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and disbursements, in addition to the costs of suit and cost of mediation.

FEDERAL DEPOSIT INSURANCE
CORPORATION, as RECEIVER for
INDYMAC BANK, FSB

(b)(6)

[Redacted]

(b)(6)

By [Redacted]

Counsel

Its

Date: 4/14/10

**GREAT AMERICAN ASSURANCE
COMPANY**

(b)(6)

[Redacted]

(b)(6)

By

[Redacted]

AVP CLAIMS - Financial Institution Services

Its

Date:

4/9/10